

**Introduced by Senator Negrete McLeod**

December 3, 2012

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An act to amend Sections 7522.02, 7522.25, 7522.30, 7522.43, 20281.5, and 21400 of, and to repeal Section 7522.66 of, the Government Code, relating to public employees' retirement, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 13, as introduced, Negrete McLeod. Public employees' retirement benefits.

(1) The Public Employees' Retirement Law (PERL) establishes the Public Employees' Retirement System (PERS) and the Teachers' Retirement Law establishes the State Teachers' Retirement System for the purpose of providing pension benefits to specified public employees. Existing law also establishes the Judges' Retirement System II which provides pension benefits to elected judges and the Legislators' Retirement System which provides pension benefits to elective officers of the state other than judges and to legislative statutory officers. The County Employees Retirement Law of 1937 authorizes counties to establish retirement systems pursuant to its provisions in order to provide pension benefits to county, city, and district employees.

The California Public Employees' Pension Reform Act of 2013 (PEPRA), on and after January 1, 2013, requires a public retirement system, as defined, to modify its plan or plans to comply with the act and, among other provisions, establishes new retirement formulas that may not be exceeded by a public employer offering a defined benefit pension plan, setting the maximum benefit allowable for employees first hired on or after January 1, 2013, as a formula commonly known as 2.5% at age 67 for nonsafety members, one of 3 formulas for safety

members, 2% at age 57, 2.5% at age 57, or 2.7% at age 57, and 1.25% at age 67 for new state miscellaneous or industrial members who elect to be in Tier 2. Under PEPR, the Judges' Retirement System I and the Judges' Retirement System II are not required to adopt the defined benefit formula contained in certain other provisions.

This bill would correct an erroneous cross-reference in the above provision and would instead specify that the Judges' Retirement System I and the Judges' Retirement System II are not required to adopt the defined benefit formula contained in other provisions for nonsafety and safety members.

(2) PEPR authorizes a public employer offering a retirement benefit plan consisting solely of a defined contribution plan prior to January 1, 2013, to continue to offer that plan instead of the defined benefit plan required pursuant to PEPR. However, PEPR requires an employer that adopts a new defined benefit pension plan or defined benefit formula on or after January 1, 2013, to conform the plan or formula to the requirements of PEPR or be determined and certified by the retirement system's chief actuary and the system's board to have no greater risk and no greater cost to the employer than the defined benefit formula and to be approved by the Legislature. Under that law, new members of the employer's plan may only participate in the defined contribution plan that was in place before January 1, 2013, or a defined contribution plan or defined benefit formula that conforms to the requirements of PEPR.

This bill would specify that the above provisions are not to be construed to prohibit an employer from offering a defined contribution plan on or after January 1, 2013, either with or without a defined benefit plan, if the employer did not offer a defined contribution plan prior to that date.

(3) On and after January 1, 2013, PEPR requires each retirement system that offers a defined benefit plan for safety members of the system to use one or more of specified defined benefit formulas and requires an employer to offer one or more of those formulas to new employees who are safety employees eligible for membership in the program.

This bill would instead require an employer to offer one or more of those formulas to new members who are safety employees.

(4) On and after January 1, 2013, PEPR requires new employees of specified public employers, the California State University, and the judicial branch who participate in a defined benefit plan to have an

initial contribution rate of at least 50% of the normal cost rate for that defined benefit plan, rounded to the nearest  $\frac{1}{4}$  of 1%, or the current contribution rate of similarly situated employees, whichever is greater.

This bill would make that provision applicable to new members employed by those entities and new members employed by the Legislature. The bill would also specify that this contribution rate for new members shall be the greater of the above 2 rates, if the greater, current contribution rate has been agreed to through the collective bargaining process.

(5) On and after January 1, 2013, PEPRA prohibits a public employer from offering a plan of replacement benefits for members and any survivors or beneficiaries whose retirement benefits are limited by specified federal law. On and after January 1, 2013, PEPRA makes that prohibition and certain other provisions related to replacement benefits applicable to new employees.

This bill would instead make those provisions applicable to new members.

(6) PEPRA, until January 1, 2018, authorizes a safety member of a public retirement system who retires for industrial disability to receive a disability retirement equal to the greater of specified benefit amounts.

This bill would repeal the above provision.

(7) Under PERL, a person who becomes a state miscellaneous member or state industrial member of PERS after August 11, 2004, does not immediately make contributions or receive service credit for his or her service until after the first 24 months of employment, except in specified circumstances. This provision, as modified by PEPRA, does not apply to a person who first becomes a state miscellaneous member or state industrial member on or after July 1, 2013.

This bill would instead specify that this provision does not apply to a person who first becomes a state miscellaneous member or state industrial member on or after January 1, 2013.

(8) Under PEPRA, a state safety member of PERS who retires on or after January 1, 2013, for industrial disability receives a disability retirement benefit equal to the greater of certain benefits, including, among others, 50% of his or her final compensation, plus an annuity purchased with his or her accumulated contributions, if any.

This bill would clarify that the portion of the industrial disability retirement benefit described above refers to an annuity purchased with the member's accumulated additional contributions.

(9) This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 7522.02 of the Government Code is  
2 amended to read:

3 7522.02. (a) (1) Notwithstanding any other law, except as  
4 provided in this article, on and after January 1, 2013, this article  
5 shall apply to all state and local public retirement systems and to  
6 their participating employers, including the Public Employees'  
7 Retirement System, the State Teachers' Retirement System, the  
8 Legislators' Retirement System, the Judges' Retirement System  
9 I, the Judges' Retirement System II, county and district retirement  
10 systems created pursuant to the County Employees Retirement  
11 Law of 1937, independent public retirement systems, and to  
12 individual retirement plans offered by public employers. However,  
13 this article shall be subject to the Internal Revenue Code and  
14 Section 17 of Article XVI of the California Constitution. The  
15 administration of the requirements of this article shall comply with  
16 applicable provisions of the Internal Revenue Code and the  
17 Revenue and Taxation Code.

18 (2) Notwithstanding paragraph (1), this article shall not apply  
19 to the entities described in Section 9 of Article IX of, and Sections  
20 4 and 5 of Article XI of, the California Constitution, except to the  
21 extent that these entities continue to be participating employers in  
22 any retirement system governed by state statute. Accordingly, any  
23 retirement plan approved before January 1, 2013, by the voters of  
24 any entity excluded from coverage by this section shall not be  
25 affected by this article.

26 (b) The benefit plan required by this article shall apply to public  
27 employees who are new members as defined in Section 7522.04.

28 (c) Individuals who were employed by any public employer  
29 before January 1, 2013, and who became employed by a subsequent  
30 public employer for the first time on or after January 1, 2013, shall  
31 be subject to the retirement plan that would have been available  
32 to employees of the subsequent employer who were first employed  
33 by the subsequent employer on or before December 31, 2012, if

1 the individual was subject to reciprocity established under any of  
2 the following provisions:

3 (1) Article 5 (commencing with Section 20350) of Chapter 3  
4 of Part 3 of Division 5 of Title 2.

5 (2) Chapter 3 (commencing with Section 31450) of Part 3 of  
6 Division 4 of Title 3.

7 (3) Any agreement between public retirement systems to provide  
8 reciprocity to members of the systems.

9 (d) If a public employer, before January 1, 2013, offers a defined  
10 benefit pension plan that provides a defined benefit formula with  
11 a lower benefit factor at normal retirement age and results in a  
12 lower normal cost than the defined benefit formula required by  
13 this article, that employer may continue to offer that defined benefit  
14 formula instead of the defined benefit formula required by this  
15 article, and shall not be subject to the requirements of Section  
16 7522.10 for pensionable compensation subject to that formula.  
17 However, if the employer adopts a new defined benefit formula  
18 on or after January 1, 2013, that formula must conform to the  
19 requirements of this article or must be determined and certified by  
20 the retirement system's chief actuary and the retirement board to  
21 have no greater risk and no greater cost to the employer than the  
22 defined benefit formula required by this article and must be  
23 approved by the Legislature. New members of the defined benefit  
24 plan may only participate in the lower cost defined benefit formula  
25 that was in place before January 1, 2013, or a defined benefit  
26 formula that conforms to the requirements of this article or is  
27 approved by the Legislature as provided in this subdivision.

28 (e) If a public employer, before January 1, 2013, offers a  
29 retirement benefit plan that consists solely of a defined contribution  
30 plan, that employer may continue to offer that plan instead of the  
31 defined benefit pension plan required by this article. However, if  
32 the employer adopts a new defined benefit pension plan or defined  
33 benefit formula on or after January 1, 2013, that plan or formula  
34 must conform to the requirements of this article or must be  
35 determined and certified by the retirement system's chief actuary  
36 and the system's board to have no greater risk and no greater cost  
37 to the employer than the defined benefit formula required by this  
38 article and must be approved by the Legislature. New members of  
39 the employer's plan may only participate in the defined  
40 contribution plan that was in place before January 1, 2013, or a

1 defined contribution plan or defined benefit formula that conforms  
 2 to the requirements of this article. *This subdivision shall not be*  
 3 *construed to prohibit an employer from offering a defined*  
 4 *contribution plan on or after January 1, 2013, either with or*  
 5 *without a defined benefit plan, if the employer did not offer a*  
 6 *defined contribution plan prior to that date.*

7 (f) The Judges' Retirement System I and the Judges' Retirement  
 8 System II shall not be required to adopt the defined benefit formula  
 9 required by Section ~~7522.25 or 7522.30~~ 7522.20 or 7522.25 or the  
 10 compensation limitations defined in Section 7522.10.

11 (g) This article shall not be construed to provide membership  
 12 in any public retirement system for an individual who would not  
 13 otherwise be eligible for membership under that system's  
 14 applicable rules or laws.

15 SEC. 2. Section 7522.25 of the Government Code is amended  
 16 to read:

17 7522.25. (a) Each retirement system that offers a defined  
 18 benefit plan for safety members of the system shall use one or  
 19 more of the defined benefit formulas prescribed by this section. A  
 20 member may retire for service under any of the formulas in this  
 21 section after five years of service and upon reaching 50 years of  
 22 age.

23 (b) The Basic Safety Plan shall provide a pension at retirement  
 24 for service equal to the percentage of the member's final  
 25 compensation set forth opposite the member's age at retirement,  
 26 taken to the preceding quarter year, in the following table,  
 27 multiplied by the number of years of service in the system as a  
 28 safety member.

Age at Retirement	Fraction
50 .....	1.426
50 $\frac{1}{4}$ .....	1.447
50 $\frac{1}{2}$ .....	1.467
50 $\frac{3}{4}$ .....	1.488
51 .....	1.508
51 $\frac{1}{4}$ .....	1.529
51 $\frac{1}{2}$ .....	1.549
51 $\frac{3}{4}$ .....	1.570
52 .....	1.590
52 $\frac{1}{4}$ .....	1.611

1	52 $\frac{1}{2}$ .....	1.631
2	52 $\frac{3}{4}$ .....	1.652
3	53 .....	1.672
4	53 $\frac{1}{4}$ .....	1.693
5	53 $\frac{1}{2}$ .....	1.713
6	53 $\frac{3}{4}$ .....	1.734
7	54 .....	1.754
8	54 $\frac{1}{4}$ .....	1.775
9	54 $\frac{1}{2}$ .....	1.795
10	54 $\frac{3}{4}$ .....	1.816
11	55 .....	1.836
12	55 $\frac{1}{4}$ .....	1.857
13	55 $\frac{1}{2}$ .....	1.877
14	55 $\frac{3}{4}$ .....	1.898
15	56 .....	1.918
16	56 $\frac{1}{4}$ .....	1.939
17	56 $\frac{1}{2}$ .....	1.959
18	56 $\frac{3}{4}$ .....	1.980
19	57 and over .....	2.000

20

21 (c) The Safety Option Plan One shall provide a pension at  
 22 retirement for service equal to the percentage of the member's  
 23 final compensation set forth opposite the member's age at  
 24 retirement, taken to the preceding quarter year, in the following  
 25 table, multiplied by the number of years of service in the system  
 26 as a safety member.

27

28	Age at Retirement	Fraction
29	50 .....	2.000
30	50 $\frac{1}{4}$ .....	2.018
31	50 $\frac{1}{2}$ .....	2.036
32	50 $\frac{3}{4}$ .....	2.054
33	51 .....	2.071
34	51 $\frac{1}{4}$ .....	2.089
35	51 $\frac{1}{2}$ .....	2.107
36	51 $\frac{3}{4}$ .....	2.125
37	52 .....	2.143
38	52 $\frac{1}{4}$ .....	2.161
39	52 $\frac{1}{2}$ .....	2.179
40	52 $\frac{3}{4}$ .....	2.196

1	53 .....	2.214
2	53 $\frac{1}{4}$ .....	2.232
3	53 $\frac{1}{2}$ .....	2.250
4	53 $\frac{3}{4}$ .....	2.268
5	54 .....	2.286
6	54 $\frac{1}{4}$ .....	2.304
7	54 $\frac{1}{2}$ .....	2.321
8	54 $\frac{3}{4}$ .....	2.339
9	55 .....	2.357
10	55 $\frac{1}{4}$ .....	2.375
11	55 $\frac{1}{2}$ .....	2.393
12	55 $\frac{3}{4}$ .....	2.411
13	56 .....	2.429
14	56 $\frac{1}{4}$ .....	2.446
15	56 $\frac{1}{2}$ .....	2.464
16	56 $\frac{3}{4}$ .....	2.482
17	57 and over .....	2.500

18

19 (d) The Safety Option Plan Two shall provide a pension at  
 20 retirement for service equal to the percentage of the member's  
 21 final compensation set forth opposite the member's age at  
 22 retirement, taken to the preceding quarter year, in the following  
 23 table, multiplied by the number of years of service in the system  
 24 as a safety member.

25

26	Age at Retirement	Fraction
27	50 .....	2.000
28	50 $\frac{1}{4}$ .....	2.025
29	50 $\frac{1}{2}$ .....	2.050
30	50 $\frac{3}{4}$ .....	2.075
31	51 .....	2.100
32	51 $\frac{1}{4}$ .....	2.125
33	51 $\frac{1}{2}$ .....	2.150
34	51 $\frac{3}{4}$ .....	2.175
35	52 .....	2.200
36	52 $\frac{1}{4}$ .....	2.225
37	52 $\frac{1}{2}$ .....	2.250
38	52 $\frac{3}{4}$ .....	2.275
39	53 .....	2.300
40	53 $\frac{1}{4}$ .....	2.325



1	53 $\frac{1}{2}$ .....	2.350
2	53 $\frac{3}{4}$ .....	2.375
3	54 .....	2.400
4	54 $\frac{1}{4}$ .....	2.425
5	54 $\frac{1}{2}$ .....	2.450
6	54 $\frac{3}{4}$ .....	2.475
7	55 .....	2.500
8	55 $\frac{1}{4}$ .....	2.525
9	55 $\frac{1}{2}$ .....	2.550
10	55 $\frac{3}{4}$ .....	2.575
11	56 .....	2.600
12	56 $\frac{1}{4}$ .....	2.625
13	56 $\frac{1}{2}$ .....	2.650
14	56 $\frac{3}{4}$ .....	2.675
15	57 and over .....	2.700

16

17 (e) On and after January 1, 2013, an employer shall offer one  
18 or more of the safety formulas prescribed by this section to new  
19 ~~employees~~ *members* who are safety employees—~~eligible for~~  
20 ~~membership in the system~~. The formula offered shall be the  
21 formula that is closest to, and provides a lower benefit at 55 years  
22 of age than, the formula provided to members in the same  
23 retirement classification offered by the employer on December  
24 31, 2012.

25 (f) On and after January 1, 2013, an employer and its employees  
26 subject to Safety Option Plan One or Safety Option Plan Two may  
27 agree in a memorandum of understanding to be subject to Safety  
28 Option Plan One or the Basic Safety Plan, subject to the following:

29 (1) The lower plan shall apply to members first employed on  
30 or after the effective date of the lower plan, and shall be agreed to  
31 in a memorandum of understanding that has been collectively  
32 bargained in accordance with applicable laws.

33 (2) A retirement plan contract amendment with a public  
34 retirement system to alter a retirement formula pursuant to this  
35 subdivision shall not be implemented by the employer in the  
36 absence of a memorandum of understanding that has been  
37 collectively bargained in accordance with applicable laws.

38 (3) An employer shall not use impasse procedures to impose  
39 the lower plan.

(4) An employer shall not provide a different defined benefit for nonrepresented, managerial, or supervisory employees than the employer provides for other public employees, including represented employees, of the same employer who are in the same membership classifications.

(g) Pensionable compensation used to calculate the defined benefit shall be limited as described in Section 7522.10.

SEC. 3. Section 7522.30 of the Government Code is amended to read:

7522.30. (a) This section shall apply to all public employers and to all new members. Equal sharing of normal costs between public employers and public employees shall be the standard. The standard shall be that employees pay at least 50 percent of normal costs and that employers not pay any of the required employee contribution.

(b) The “normal cost rate” shall mean the annual actuarially determined normal cost for the defined benefit plan of an employer expressed as a percentage of payroll.

~~(c) New employees employed on and after January 1, 2013,~~  
*members employed* by those public employers defined in paragraphs (2) and (3) of subdivision (i) of Section 7522.04, the Legislature, the California State University, and the judicial branch who participate in a defined benefit plan shall have an initial contribution rate of at least 50 percent of the normal cost rate for that defined benefit plan, rounded to the nearest quarter of 1 percent, or the current contribution rate of similarly situated employees, whichever is greater, *if the greater current contribution rate has been agreed to pursuant to the requirements in subdivision (e)*. This contribution shall not be paid by the employer on the employee’s behalf.

(d) Notwithstanding subdivision (c), once established, the employee contribution rate described in subdivision (c) shall not be adjusted on account of a change to the normal cost rate unless the normal cost rate increases or decreases by more than 1 percent of payroll above or below the normal cost rate in effect at the time the employee contribution rate is first established or, if later, the normal cost rate in effect at the time of the last adjustment to the employee contribution rate under this section.

(e) Notwithstanding subdivision (c), employee contributions may be more than one-half of the normal cost rate if the increase

1 has been agreed to through the collective bargaining process,  
2 subject to the following conditions:

3 (1) The employer shall not contribute at a greater rate to the  
4 plan for nonrepresented, managerial, or supervisory employees  
5 than the employer contributes for other public employees, including  
6 represented employees, of the same employer who are in related  
7 retirement membership classifications.

8 (2) The employer shall not increase an employee contribution  
9 rate in the absence of a memorandum of understanding that has  
10 been collectively bargained in accordance with applicable laws.

11 (3) The employer shall not use impasse procedures to increase  
12 an employee contribution rate above the rate required by this  
13 section.

14 (f) If the terms of a contract, including a memorandum of  
15 understanding, between a public employer and its public  
16 employees, that is in effect on January 1, 2013, would be impaired  
17 by any provision of this section, that provision shall not apply to  
18 the public employer and public employees subject to that contract  
19 until the expiration of that contract. A renewal, amendment, or  
20 any other extension of that contract shall be subject to the  
21 requirements of this section.

22 SEC. 4. Section 7522.43 of the Government Code is amended  
23 to read:

24 7522.43. (a) A public employer shall not offer a plan of  
25 replacement benefits for members and any survivors or  
26 beneficiaries whose retirement benefits are limited by Section 415  
27 of Title 26 of the United States Code. This section shall apply to  
28 ~~new employees~~ *members*.

29 (b) A public retirement system may continue to administer a  
30 plan of replacement benefits for employees first hired prior to  
31 January 1, 2013.

32 (c) A public employer that does not offer a plan of replacement  
33 benefits prior to January 1, 2013, shall not offer such a plan for  
34 any employee on or after January 1, 2013.

35 (d) A public employer that offers a plan of replacement benefits  
36 prior to January 1, 2013, shall not offer such a plan to any  
37 additional employee group to which the plan was not provided  
38 prior to January 1, 2013.

39 SEC. 5. Section 7522.66 of the Government Code is repealed.

~~7522.66.— (a) A safety member of a public retirement system who retires for industrial disability shall receive an industrial disability retirement benefit equal to the greater of the following:~~

~~(1) Fifty percent of his or her final compensation attributable to the defined benefit plan, plus an annuity purchased with his or her accumulated contributions, if any.~~

~~(2) A service retirement allowance, if he or she is qualified for service retirement.~~

~~(3) An actuarially reduced factor, as determined by the actuary, for each quarter year that his or her service age is less than 50 years of age, multiplied by the number of years of safety service subject to the applicable formula, if he or she is not qualified for service retirement.~~

~~(b) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.~~

SEC. 6. Section 20281.5 of the Government Code is amended to read:

20281.5. (a) Notwithstanding Section 20281, a person who becomes a state miscellaneous member or state industrial member of the system on or after the effective date of this section because the person is first employed by the state and qualifies for membership shall be subject to the provisions of this section.

(b) Members subject to this section shall not accrue credit for service in the system and shall not make employee contributions to the system, including the contributions set forth in Section 20677.4, for employment with the state until the first day of the first pay period commencing 24 months after becoming a member of the system.

(c) Notwithstanding subdivision (a), this section shall not apply to any of the following:

(1) Persons who are already members or annuitants of the system at the time they are first employed by the state.

(2) Employees of the California State University, or the legislative or judicial branch of state government.

(3) Members of the Judges' Retirement System, the Judges' Retirement System II, the Legislators' Retirement System, the State Teachers' Retirement System, or the University of California Retirement Plan.

1 (4) Persons who are members of a reciprocal retirement system  
2 and whose employment was subject to a reciprocal retirement  
3 system within the six months prior to membership in this system.

4 (5) Persons whose service is not included in the federal system.

5 (6) Persons who are employed by the Department of the  
6 California Highway Patrol as students at the department's training  
7 school established pursuant to Section 2262 of the Vehicle Code.

8 (7) Persons who had ceased to be members pursuant to Section  
9 20340 or 21075.

10 (8) Persons who are National Guard members pursuant to  
11 Section 20380.5.

12 (d) A separation of employment does not alter the 24-month  
13 period described by subdivision (b). A member who separates  
14 from state employment shall remain subject to this section if he  
15 or she returns to state employment as a state miscellaneous or state  
16 industrial member within that 24-month period.

17 (e) Any regulations adopted by the board to implement the  
18 requirements of this section shall not be subject to the review and  
19 approval of the Office of Administrative Law, pursuant to Chapter  
20 3.5 (commencing with Section 11340) of Part 1 of Division 3. The  
21 regulations shall become effective immediately upon filing with  
22 the Secretary of State.

23 (f) This section shall not apply to any person who first becomes  
24 a state miscellaneous member or a state industrial member on or  
25 after ~~July~~ January 1, 2013.

26 SEC. 7. Section 21400 of the Government Code is amended  
27 to read:

28 21400. (a) A safety member who retires on or after January  
29 1, 2013, for industrial disability shall receive a disability retirement  
30 benefit equal to the greater of the following:

31 (1) Fifty percent of his or her final compensation, plus an annuity  
32 purchased with his or her accumulated *additional* contributions,  
33 if any.

34 (2) A service retirement allowance, if he or she is qualified for  
35 service retirement.

36 (3) An actuarially reduced factor, as determined by the actuary,  
37 for each quarter year that his or her service age is less than 50  
38 years, multiplied by the number of years of safety service subject  
39 to the applicable formula, if he or she is not qualified for service  
40 retirement.

1 (4) Nothing in this section shall require a member to receive a  
2 lower benefit than he or she would have received prior to January  
3 1, 2013, as the law provided prior to that date.

4 (b) This section shall remain in effect only until January 1, 2018,  
5 and as of that date is repealed, unless a later enacted statute, that  
6 is enacted before January 1, 2018, deletes or extends that date.

7 SEC. 8. This act is an urgency statute necessary for the  
8 immediate preservation of the public peace, health, or safety within  
9 the meaning of Article IV of the Constitution and shall go into  
10 immediate effect. The facts constituting the necessity are:

11 In order to address technical problems and avoid costly and  
12 unnecessary changes to retirement systems in implementing the  
13 California Public Employees' Pension Reform Act of 2013  
14 (Chapter 296 of the Statutes of 2012), it is necessary for this act  
15 to take effect immediately.